

## **REMARKS**

This amendment is in response to the Office Action mailed May 17, 2005. Claims 1-20 are pending in the application. Claims 1, 2, 12, 15, 17 and 20 are amended as noted above. These amendments and new claims do not introduce new matter, and are supported by the present application as noted below.

### **1. Rejections and Objections Under 35 USC §§ 112 and 132**

The claims have been amended to more clearly recite the limitations the Examiner had noted and to evidence support in the present application.

In particular, claim 1, paragraph b, was objected to, which has been amended. Support for the claim limitation is found in the specification at least at page 3, lines 24-26, page 5, lines 6-8, and page 6, lines 25-29.

Claim 2. included language that was objected to, which has been amended. Support for the claim limitation is found in the specification at least at page 8, lines 11-13.

Claims 15, 17 and 20 included language that was objected to, which has been amended. Support for the claim limitation is found at least at page 15, lines 1-8, and Table 2.

These amendments are supported by the Specification, and therefore, applicants respectfully request that the rejections of the claims and the objections to the specification be withdrawn.

## **2. Claim Rejections Under 35 USC § 103**

### **A. Claims 1-3**

Claims 1-3 were rejected under 35 USC § 103(a) as being obvious over King et al., US 5,704,045 (hereinafter King), in view of Schwab, S., "The International Journal of Insurance Law 1997," 4:28-39, 175-178 (hereinafter Schwab), and further in view of "Hall, R. "Alternatives to Estimation of Claims and Acceleration of Reinsurance Recoverables: The Uniform Receivership Law," (1999) (hereinafter Hall). The rejection is overcome by the present amendments for the reasons noted below.

#### Claims 1-3

Present claim 1 recites "guaranteeing the payment of the fixed dividend to claimants or insureds of the insolvent Insurance Company when said allowed claims mature." The Examiner cited Schwab for this teaching, however, Schwab fails to teach or suggest to one of skill in the art that the payment is made upon allowed claims that have matured. As the examiner notes, Schwab teaches that the distribution of assets are made on contingent claims to allow those contingent claims to participate in the early disposition of the insolvent insurer's assets. A contingent claim is not a mature claim. Schwab even defines such claim terms at pages 29 and 30.

In contrast to Schwab, claim 1 recites guaranteeing the payment when the claims mature, that is, the contingent claims are not paid a dividend early as in

Schwab, but the claims are paid late only after the contingent claims are allowed and the claims mature. So rather than the mature claims being cut-off when the estate of the insolvent insurance company is depleted – the situation Schwab describes as being avoided by early payoff on the contingent claims, claim 1 provides that the dividend is guaranteed to be paid when the claim matures.

Schwab suggests that contingent claimants receive a payment based on their estimated claim value of a contingent claim rather than a fixed dividend based on the actual claim amount when it matures as in the applicants' method (see page 9 of present application – claim paid as a percentage of the NOD, which is made when a mature claim is no longer contingent). This procedure in Schwab appears mainly as a device to allow the Liquidator to obtain the reinsurance recoverables prior to the actual value of the "contingent" claims becoming known, and then paying only against the estimated value of the claim, rather than an NOD liquidated amount as with mature claims. Even at that, there is no "guarantee" that those "allowed" contingent claims would receive any dividend as Schwab noted that the Court still "allows reinsurers, and others, to contest whether a claim is subject to estimation and the value of a claim." (page 176, Ins. 42-44). For this additional reason, Claim 1 is patentable over the combination of cited references.

Even in combination with the other cited references, King and Hall, there is no teaching of guaranteeing the payment of a fixed dividend when the allowed claim matures. The Examiner admits King contains no such teachings, and the

sections of Hall cited in the rejection of claim 1 teaches payments from the reinsurer to the receiver, and does not refer to any guaranteed payment or a fixed dividend being paid to the claimants when the claim matures.

Accordingly, claim 1 and its dependent claims are patentable over the cited art. Applicants request that the rejection be withdrawn.

#### Claims 12-15

Claims 12-15 were rejected as being obvious over King, Schwab, Hall further in view of Jenkins. Claims 12-15 depend from claim 1 and should be allowable for at least the same reasons as set forth above for claim 1.

Applicants request that the rejection be withdrawn.

#### **B. Claims 4-9 and 16-18**

Claims 4-9 were rejected as being obvious over King, in view of Schwab in view of Hammond (US 5,712,984). This rejection is traversed for the following reasons.

#### Claims 4-9

Like Claim 1, claim 4 recites that the guaranteed payments are made on the claims when the claims mature. Schwab teaches making payments based on estimated values of the "contingent" claims. Accordingly, for this reason and the reasons noted above with regard to Claim 1, Claim 4 is not obvious over the cited art. Thus, the rejection against independent claim 4 and dependent claims 5-9 should be withdrawn.

Claims 16-18

Claims 16-18 were rejected as being obvious over King, Schwab, Hall further in view of Jenkins. Claims 16-18 depend from claim 4 and should be allowable for at least the same reasons as set forth above for claim 4. Applicants request that the rejection be withdrawn.

**C. Claim 10-11 and 19-20**

Claims 10-11 were rejected under 35 USC § 103(a) as being obvious over Hammond et al., US 5,712,984 (hereinafter Hammond) in view of King et al., US 5,704,045 (hereinafter King). The rejection is traversed for the reasons noted below.

Claim 10

Like Claim 1, independent claim 10 recites that the guaranteed payments are made on the claims when the claims mature. In connection with claim 1, the rejection admitted that this King fails to disclose this limitation. The portion of King cited for this limitation in claim 10 fails to teach that the insolvent Insurer is indemnified for a guaranteed payment rate of the mature claims. Hammond also fails to teach this limitation. As discussed above in connection with claim 1, Schwab (while not relied on here) also fails to teach making payments based on estimated values of the "contingent" claims. In combination these references do not suggest to one of ordinary skill in the art to modify their teachings to obtain this claimed limitation. Accordingly, for this reason and the reasons noted above

with regard to Claim 1, Claim 10 is not obvious over the cited art. Thus, the rejection against independent claim 10 and dependent claim 11 should be withdrawn.

Claims 19-20

Claims 19-20 were rejected as being obvious over King, Schwab, Hall further in view of Jenkins. Claims 19-20 depend from claim 10 and should be allowable for at least the same reasons as set forth above for claim 10. Applicants request that the rejection be withdrawn.

**3. Conclusion**

Applicants respectfully submit that the rejections have been overcome in view of the amendments and above remarks, and that the present claims are in condition for allowance. The Examiner is kindly requested to phone the undersigned to clarify any remaining issues to expedite allowance.

Respectfully submitted,



Marc V. Richards  
Registration No. 37,921  
Attorney for Applicants

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, ILLINOIS 60610  
(312) 321-4200